

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

2005 NOV -8 P 6:40

MARLENE JOHANSEN

Plaintiff

v.

Civil Action No. 04-11789-RCL

UNITED STATES OF AMERICA

Defendant

PLAINTIFF'S MOTION TO DISMISS AND STRIKE COUNTERCLAIMS

Now comes Marlene Johansen pursuant to Rules 12(b)(6), 19, 20 and 21 of the Federal Rules of Civil Procedure and Rule 15.1 of the Local Rules of the Federal District Court for the District of Massachusetts moves this honorable Court to strike the Defendant's Counterclaims:

1. That the Defendant has styled its Answer to include Counterclaims against counsel and National City Mortgage Co. The Defendant is precluded by the Federal Rules of Civil Procedure from adding a "Counterclaim" against those who are not parties to the action.
2. If the Defendant wished to add parties to this action Rule 15 of the Local Rules of the Federal District Court require notice to the potential party be given ten days prior to the filing of a motion to add a party. The Defendant has failed to comply with the Court's rules.
3. In the first unnumbered paragraph of the "Counterclaim" the Defendant alleges that Susan M. Bertrand holds title to the subject property as the nominee. There is no person

reflected anywhere in the Plaintiff's chain of title nor her divorce litigation with that name.

4. The Plaintiff received the property in dispute pursuant to a judgment of the Probate and Family Court of the Commonwealth of Massachusetts. Certified copies of the initial and modified judgments are attached hereto.

5. As is more extensively detailed in the Plaintiff's Memorandum of Law which is filed in support of this motion there is "no reasonable application of law that would entitle" the Defendant to prevail on its Counts Numbered I & II.

WHEREFORE, the Plaintiff requests that the honorable Court:

1. Strike the Counterclaims against the non-party's;
2. Dismiss the Defendant's counterclaims;
3. Schedule a hearing on this Motion;
4. Award reasonable attorney's fees and costs; and
5. Grant such further relief as deemed necessary by the Court.

Marlene Johansen
by her attorney

Timothy J. Burke
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Dated: November 8, 2004

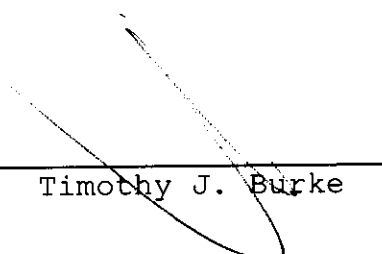
Plaintiff's Certificate of Compliance with Local Rule 7.1.

Plaintiff's counsel hereby certifies that his office telephoned counsel for the Defendant, Stephen Turanchik, on Thursday, November 4, 2004. No agreement can be reached on narrowing the issue before the Court.

Certificate of Service

I hereby certify that a true copy of the above document was served upon each attorney of record via first class mail, postage prepaid on November 8, 2004 to the following counsel of record:

Stephen Turanchik
Trial Attorney, Tax Division
Department of Justice
P.O. Box 55
Ben Franklin Station
Washington, D.C. 20044



Timothy J. Burke